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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

HARVEY GARCIA,

Defendant and Appellant.

G052908

(Super. Ct. No. P01395)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Craig Robison, Judge (retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Kendall Dawson Wasley, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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In a November 30, 2015 order, the court reinstated defendant Harvey Garcia's parole, after terminating his parole four months earlier. Defendant appealed from the November 30, 2015 order, and we appointed counsel to represent him. Counsel did not argue against defendant, but advised he was unable to find an issue to argue on defendant's behalf. Defendant was given an opportunity to file written argument on his own behalf, but he did not do so.

In February 2014, defendant was released from prison to parole supervision. On July 31, 2015, the Department of Corrections and Rehabilitation (DCR) petitioned for revocation of defendant's parole.¹

At the August 3, 2015 revocation hearing, it was determined that defendant's excess presentence custody credits (*In re Sosa* (1980) 102 Cal.App.3d 1002 (*Sosa*)) exceeded the maximum sentence. Defense counsel stated: "We discussed this case at the bench, Your Honor. Mr. Garcia has *Sosa* . . . credits from when he was originally sentenced. Therefore, the court offered him 120 days and then [to] revoke and terminate parole. And he'd like to accept that."

The court advised defendant that the DCR's petition alleged he absconded from supervision and failed to participate as directed by his parole officer. The court further stated, "If you admit the violations you'll be waiving your right to a hearing. You will be sentenced to serve 120 days in county jail, and you'll get credit for your time in. [¶] I'm going to terminate parole upon your release from county jail so you will not be on parole."

¹

The DCR's petition states defendant was originally convicted of Penal Code section 186.22, subdivision (d), relating to public offenses committed for or with a gang, with intent to promote or assist criminal conduct by gang members. But the DCR's July 31, 2015 parole violation report states defendant was on parole supervision for violating Penal Code section 186.22, subdivision (a), "Criminal Street Gang Activity."

Defendant then waived his right to a hearing and admitted the violations. Defense counsel joined in defendant's decision. The court sentenced defendant to 120 days in jail with 14 days credit, and stated, "I'm going to order parole terminated."

According to the cover page of the reporter's transcript for the August 3, 2015 revocation hearing and the minute order of that date, a deputy district attorney appeared for the People. But he never speaks or is referred to during the short (less than two-and-a-half reporter's transcript pages) proceedings.

On November 24, 2015, a new petition to revoke parole was filed.

At a November 30, 2015 hearing, defense counsel argued defendant's parole was terminated on August 3, 2015, and therefore the court had "no jurisdiction over this anymore" The People countered that under Penal Code sections 1203.2 and 3000.03, the court had lacked jurisdiction to terminate defendant's parole period. The People withdrew their November 24, 2015 petition to revoke defendant's parole, and moved to reinstate his parole. Defense counsel rejoined "that Penal Code section 3000.8 [sic] does not specifically state that the court cannot terminate parole."² The court found that its August 3, 2016 termination of parole had been an act in excess of its authority, and therefore rescinded the order of termination and reinstated defendant on parole.

No Arguable Issue Can Be Found

On appeal counsel did not argue against defendant, but advised the court he had found no issues to argue on defendant's behalf. (*People v. Wende, supra*, 25 Cal.3d 436.) To assist in our independent review of the record, and pursuant to *Anders v. California* (1967) 286 U.S. 738, counsel has suggested we consider two issues in our search for error. We have considered the issues suggested by counsel and have reviewed

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Defense counsel was apparently referring to Penal Code section 3000.08, since Penal Code section 3000.8 does not exist.

the entire record. Counsel's assessment was correct. There is no issue arguable on appeal. Accordingly, we affirm the postjudgment order.

IKOLA, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.